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CITY OF NEWPORT

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LOCAL CONTRACT REVIEW BOARD RULES

The following Public Contracting Rules (PCR) have been adopted by the City Council acting as the Local Contract Review Board. These rules apply to all contracting by the City, as well as the purchase and disposal of personal property, but do not apply to acquisition, sale or other transfer of real property.

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CITY OF NEWPORT LOCAL CONTRACT REVIEW BOARD

PUBLIC CONTRACTING RULES

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CHAPTER 10 COMPETITIVE PROCESS REQUIRED, EXEMPTIONS

10.010 Competitive Process, Exemptions and Definitions

A. All public improvement contracts shall be based upon competitive bidding or competitive proposals (collectively "formal competitive process") as described in Chapter 30, except the following:

1. Contracts made with other public agencies. Contracts made with other public agencies are not subject to these rules, except to the extent that the rules explicitly allow certain transactions with other public agencies.
2. Contracts which are exclusively for personal services as determined by application of SectionPCR 70.010. Personal service contracts may include incidental materials such as written reports, architectural or engineering renderings, and similar supplemental materials. Personal service contracts shall be awarded using the procedures established in Chapter 70.
3. Grants and contracts relating to donations by or to the City.
4. Contracts for professional or expert witnesses or consultants relating to existing or potential litigation or other legal matters.
5. Transfers of real property or any interest in real property.
6. Energy savings performance contracts.
7. Contracts relating to bonds, certificates of participation, and similar debt repayment obligations, or to program loans, or to public investments.
8. Contracts relating to employee benefit plans, including contracts with investment managers and financial institutions.
9. Contracts specifically exempt under the following rules:

- 10.015 Exemption of Contracts under Certain Dollar Amounts
- 10.020 Contracts for Price Regulated Items
- 10.025 Library Periodicals and Materials
- 10.030 Advertising Contracts
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B. As used in this Section:

1. "Board" means the City of Newport Local Contract Review Board.

2. "City" or "The City" means Newport, Oregon.

3. "Competitive bidding" means a competitive sealed bid procedure for awarding contracts following the rules set forth in Chapter 30.

4. "Competitive quotes" means the solicitation and receipt of offers by the City from competing vendors, The solicitation may be by advertisement or by the City initiating a request to vendors to make an offer. The solicitation and the offer may be written or oral.

5. "Invitation to bid" means the solicitation of competitive bids in which price among those bidders meeting specifications will be the predominant award criterion.

6. "Personal property" means everything subject to ownership which is not real property and has exchangeable value.

7. "Price Agreement" means an agreement in which the vendor agrees to supply all goods or services of a particular type ordered by the City within a specified time period at a specified price and on terms specified in the price agreement.

8. "Public agency" means any federal, state or local government, or any department of any federal, state or local government, including any

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local school or education district or any special district.

9. "Public Improvement" means a project for construction, reconstruction or major renovation on real property by or for the City. Public improvement does not include:

(A) Projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

10. "Request for Proposal" means the formal solicitation of competitive written proposals to be used as a basis for making an acquisition or entering into contract when price will not be the sole award criterion, following the rules set forth in Section 30.010 to 30.205.

11. "Service" means work performed to meet a demand, especially work that is not connected with manufacturing a product.

12. "Service contract" means a contract that calls primarily for a contractor's time and effort rather than an end product.

13. "Telecommunications Services" means the lease or rental of the use of voice and data transmission facilities or services, or of central office services, but does not include acquisition of switch or station equipment or acquisition or installation of wire and cable.

- C. When a contract is exempt from a formal competitive process, the City shall use reasonable efforts to ensure it is obtaining goods or services on the best terms (price, quality and other terms). Those efforts shall normally include seeking out potential contractors and determining price and availability by use of informal quotes or other similar methods. The City shall not knowingly purchase goods or services if it knows that comparable goods or services are available at lower cost on otherwise similar terms.

10.015 Exemption of Contracts under Certain Dollar Amounts

A. Small Contract Procedures

When the amount of the contract does not exceed \$5,000, the City may award the contract from any source known to the City to provide goods or services of acceptable quality at competitive prices. The City may not knowingly use a more expensive source if the goods or services of equivalent quality are readily available from alternate sources on the same terms at lower prices.

B. Intermediate Contract Procedures

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~~When If a contract is not a public improvement contract and the estimated amount of the~~
~~the contract is not a public improvement contract and is not less more than \$5000, and~~
~~but does not exceed \$100100,000, or if a contract is a public improvement contract and~~
~~the estimated value of the contract does not exceed \$100,000, the City may follow the~~
~~procedures set forth in this section:~~

1. ~~The City may award the contract after seeking in good faith at least three~~
~~competitive quotes or proposals.~~

~~If the estimated value of a public improvement contract does not exceed \$100,000, the~~
~~City may follow these intermediate contract procedures:~~

2. ~~The City shall keep a written record of the source and amount of the quotes or~~
~~proposals received.~~
3. ~~If three suppliers are not available, a lesser number of actual quotes or~~
~~proposals will suffice provided that a written record is made of the effort to~~
~~obtain the quotes or proposals.~~

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C. No Division or Fragmentation of Contracts

A procurement of goods and/or services may not be artificially divided or fragmented to allow use of the small or intermediate contract procedures. However, each order of library materials for the City library shall be considered a separate contract and may be made by using the small contract or intermediate contract procedures if within the dollar amounts for those procedures. Also, a series of purchases of goods from the same source is not an artificial division of a contract if the purchase is of different types of goods, if the goods fluctuate in price, if the standards or available models change frequently (such as with computers and other electronic goods) or if there is a substantial period of time between purchases. Any renewal or new contract following one or more small or intermediate contracts of the same type with the same contractor shall consider ~~the total cost of all contracts~~ this section to ensure division or fragmentation of contracts does not occur.

D. Amendment of Small and Intermediate Contracts

A contract awarded under the small or intermediate contract procedures may not be amended if the amendment would result in a total contract price that exceeds the maximum amount for the procedure used to award the original contract.

E. The City Manager and designees are authorized to award and enter into contracts under this section.

10.020 Contracts for Price Regulated Items

The City may, without formal competitive process, contract for the purchase of the goods or services where the rate or price for the goods or services being purchased is

established by federal, state, or local regulatory authority.

10.025 Library Periodicals and Materials

Purchases for the library of materials for library circulation and reference, including books, CDs, subscriptions for periodicals including journals, magazines, and similar publications may be made without formal competitive process. However, this provision does not authorize the use of a higher priced source if a lower price source of acceptable quality and performance is known to be available.

10.030 Advertising Contracts

The City may purchase advertising without formal competitive process, but shall follow the procedures and standards applicable to personal services contracts.

10.035 Equipment Maintenance, Repair, Parts and Overhaul

Contracts for equipment maintenance, repair, parts or overhaul may be let without a formal competitive process, subject to the following conditions:

- A. The services and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
- B. The services and/or parts required are available from a limited number of sources and the City has made a reasonable effort to check the known sources.

~~The City should, where possible, use a price agreement rather than relying on this exception.~~

10.040 Purchases Under Established Price Agreements

When the price of goods and services has been established by a price agreement entered into by a competitive process, the City may purchase goods and services from the supplier without a subsequent competitive process.

10.045 Gasoline, Diesel Fuel, Heating Oil, Lubricants, Asphalt and Chemicals

The City may, without a competitive process, purchase gasoline, heating oil, lubricants, asphalt, and chemicals for treatment plant or swimming pool operations or testing, subject to the following:

- A. Prior to selection of the contractor, the City attempts to get quotes from at least three vendors in the area;
- B. The City makes its purchase from the least expensive source of those providing

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quotes; and

C. The City retains written justification for the purchase made.

10.050 Investment Contracts

The City may, without a formal competitive process, contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

10.055 Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by a formal competitive process or by one of the following procedures:

A. Agent of Record.

The City may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility. Proposals for coverage are presented to the City Manager or designee for approval:

1. Prior to the selection of an agent of record, the City shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area. The advertisement shall generally describe the nature of the insurance that the City will require. If the amount of the annual premium for insurance other than employee benefits insurance is likely to exceed \$10,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.
2. An agent's appointment shall not exceed a period of 5 years, but the same agent(s) may be selected in a subsequent period. Agents must qualify for the appointments prior to each period as if each appointment period were the first.
3. In selecting an agent of record, the City shall select the agent(s) most likely to perform the most cost effective services at a level of competence acceptable to the City.

B. Specific Proposals for Insurance Contracts.

The City may solicit proposals from licensed insurance agents for the purpose of

acquiring specific insurance contracts subject to the following conditions:

1. The City shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract and to solicit proposals for providing the services required in connection with that contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area. If the amount of annual premium for insurance other than employee benefits insurance is likely to exceed \$10,000 per year, such notice shall also include notice published in at least one insurance trade publication of general circulation in the state.
2. The City shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

10.060 Employee Benefit Insurance

The City may purchase employee benefit insurance without formal competitive process.

10.065 Information Technology Purchases

- A. The City may enter into contracts for the purchase or lease of computer hardware, software, peripherals, and related equipment, goods or services without a formal competitive process. The City may enter into contracts for the purchase of photocopiers without a formal competitive process.
- B. In exercising this exemption, the City shall consider operating capabilities, limitations, and cost of each system, component or other goods or services that it purchases. The City shall use reasonable efforts to determine the availability and costs of systems, components and services and shall select the product that will produce the best combination of performance and cost.

10.070 Single Seller of Product or Service

A. General

The City may purchase without a formal competitive process if there is only one seller of a product or service of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller. The determination of a sole source must be based on written findings as required by ORS 279B.075. A sole source contract may be awarded only after approval of the findings by the City Manager or acting, interim or temporary City Manager. To the extent reasonably practical, the City shall negotiate with single sellers to obtain the best possible contract terms for the City.

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B. Telecommunications Services

The City may award a contract for telecommunications services without a formal competitive process if it determines that no competition exists among service suppliers. In determining whether competition exists, the City may consider the following factors:

1. The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary from service category to service category and cannot be predetermined in advance.
2. The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. For example, if the City's requirement is for digital services, analog services are not comparable or substitutable.
3. The extent to which alternative providers can respond to the City's interests in consistency and continuity of services throughout its service area, volume discounts, and centralized management. The City must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the City may solicit information by any means, including informal discussions or correspondence or through a formal Request for Information.

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C. Developer Provision of Public Improvements

At times, private developers provide public improvements for the City as required by a condition of land use approval or as required by a development agreement with the City. The developer in those circumstances is conclusively deemed to be a sole source for the provision of the public improvements, without the need for findings. No competitive process is required to enter into a development agreement that includes the provision of public improvements by a developer or for a developer to provide and the City to accept public improvements as required by a condition of approval. The City may agree to pay for a portion of the public improvements.

10.075 Contract Amendments (Including Change Orders and Extra Work)

A contract amendment for additional work including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor without a formal competitive process subject to the following conditions:

- A. The original contract was let by formal competitive process, and the contract documents included costs, unit prices or bid alternates were provided that provide a basis for determining the cost for additional work, and a binding obligation exists

on the parties covering the terms and conditions of the additional work; or

- B. The amount of the aggregate cost increase resulting from all amendments does not exceed 25% of the initial contract. Amendments made pursuant to Section A of this rule are not included in computing the aggregate amount under this section.

10.080 Affirmative Action Contracts

- A. Public contracts may be awarded without a formal competitive process pursuant to a specific Affirmative Action plan. Affirmative Action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, or disabled veterans, including but not limited to, personnel practices of contractors, "set-aside" programs, and minority business enterprises. These rules shall not be construed to prohibit engaging in practices designed to promote affirmative action goals and policies.
- B. In carrying out the affirmative action policy, by appropriate ordinance, resolution or administrative rule, the City may limit competitive bidding on a public contract for procurement of goods and services or on any public contract estimated to cost \$50,000 or less to contracting entities owned or controlled by persons described in Subsection A of this section. A bidder or proposer shall certify that they are an entity owned or controlled by persons described in Subsection A of this section in the documents accompanying the bidder's or proposer's proposal.

10.085 ~~Purchase Off Contract by Other Public Agencies~~ Permissive Cooperative Purchasing Contracts

- A. The City may purchase any good or service without a formal competitive process if the good or service is purchased from a bidder that has been awarded a contract for the same good or service, whether by a requirements contract or by individual contract by another public agency through its public contract purchasing procedures if:
 - 1. The original contract was awarded by a competitive bid or proposal process or pursuant to an exemption equivalent to an exemption provided by these rules.
 - 2. The contract allows other public agency usage of the contract. A contract that does not prohibit other public agency usage of the contract shall be deemed to allow other public agency use, unless the agency that awarded the contract objects to the use.
 - 3. The purchase is on the same terms, or terms which are no less favorable to the City in all material respects, as the contract awarded by the

public agency. The City may purchase any good or service allowed under this section with a purchase order.

B. if the City uses the process described under Subsection A, and the City estimates the contract will be more than \$250,000 then the City will advertise its intent to contract, provide vendors the opportunity to comment and respond to comments received.

C. The City may also, as appropriate, use the Joint Cooperative Procurement and Interstate Cooperative Procurement processes as set forth in ORS 279A.210 and ORS 279A.220 respectively.

BD. A purchase under the Oregon Cooperative Purchasing Program or any similar federal or regional program, including the Electronic Government Act of 2002 (10 USC 381) shall be considered an exempt purchase under this exemption.

10.090 Oil or Hazardous Material Removal

A. The City may enter into public contracts without a formal competitive process when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, and the order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that has created an emergency condition. In exercising its authority under this exemption, the City shall:

1. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services.
2. Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup.
3. Record the measures taken under Subsection 1 of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selection of the contractor selected.

B. The City shall not contract pursuant to this exemption in the absence of an order from DEQ to clean up a site with a time limitation that would not permit hiring a contractor under the usual formal competitive process procedures.

10.095 Contracts With Qualified Non-Profit Agencies/Licensed Blind Vendors

The City may enter into contracts with qualified non-profit agencies providing employment for disabled individuals without a competitive process under ORS 279.835 to 279.855 and may enter into contracts for vending on City Property with persons licensed under ORS 346.510 to 346.570. The City shall contract with such agencies or licensees when required by law. To the extent competition exists among qualified non-profit agencies, the City shall select the qualified non-profit agency offering the lowest price for an acceptable level of service.

10.100 Ammunition

The City may enter into contracts for the purchase of lethal and non-lethal ammunition, both for service and for training, without a formal competitive process.

10.105 Public Improvement Contracts Involving Design or Construction Management

The City may enter into public improvement contracts without competitive bidding if the contracts involve design or construction management or require expertise beyond normal construction work. Unless exempt under some other exemption, a competitive proposal process must be used. One of the following specific processes shall be followed:

A. Construction Manager/General Contractor

The City may select a person or firm to act as a Construction Manager/General Contractor (CM/GC) to construct public improvements by means of a competitive proposal process.

1. A CM/GC performs specified Construction Manager services in addition to traditional General Contractor services. A CM/GC contract shall require full performance within a negotiated Guaranteed Maximum Price (GMP). The basis for payment shall be reimbursable direct costs plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.
2. The solicitation documents shall include:
 - a. A description of the evaluation process and criteria. The criteria may include cost, quality, experience, availability, commitment to timely completion, and other factors.
 - b. The process to be followed for establishing the guaranteed maximum price.
 - c. A description of the circumstances under which any of the following activities may be authorized and undertaken for

compensation prior to establishing the GMP, but only after unit prices are established:

- i. Early procurement of materials and supplies;
- ii. Early release of bid packages for such things as site development; and
- iii. Other advance work related to critical components of the project.

3. The contract documents shall include:

- a. A description of the method by which the CM/GC shall competitively select contractors and subcontractors.
- b. Either the maximum guaranteed price or a process for establishing a guaranteed maximum price.
- c. A description of the situations in which the CM/GC may perform the work of the improvement without subcontracting, including any requirement that the CM/GC compete with others to do the work and the work that the CM/GC may perform directly without a competitive process.
- d. The standards or factors under which changes or additional work that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope of the GMP.
- e. The disposition of any cost savings resulting from completion of the work below the GMP, including the CM/GC share, if any, in those cost savings. Normally, the cost savings should accrue to the City.
- f. The items or categories of items that are eligible for cost reimbursement within the GMP.
- g. A provision for a final audit adjustment and process.
- h. A fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the

selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.

i. Any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP).

B. Design-build Contracts

1. A design-build contract is one in which a single entity designs and constructs a public improvement. Design-build contracts shall only be used if City staff has the expertise and experience to administer a design-build contract. The design-build process may be used to:

a. Obtain through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility.

b. Integrate value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing contract changes.

c. Reduce the risk of design flaws, misunderstandings and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing contract claims.

d. Shorten project time as construction activity (early submittals, mobilization, subcontracting and advance work) commences prior to completion of a "biddable" design, or where a design solution is still required (as in complex or phased projects); or

e. Obtain innovative design solutions through the collaboration of the contractor and design team, which would not otherwise be possible if the contractor had not yet been selected.

2. If a design-build contractor is not an Oregon licensed design professional, the design-build contractor shall disclose in its proposal that it is not an Oregon licensed design professional and identify the Oregon licensed design professional(s) who will provide design services.

3. A design-build contractor awarded a contract shall provide a ~~performance bond as additional~~ additional security as required by ORS 279C.380(1)(a). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

4. The level or type of design services required must be clearly defined within the solicitation documents and contract, along with a description of the level or type of any design services previously performed for the project. The services to be performed shall be clearly delineated as either design specifications or performance standards.

5. The contract shall clearly identify the liability of design professionals, shall include requirements for professional liability insurance, and shall clearly identify the extent of any indemnity or warranty.

C. Other Public Improvement ~~Projects~~ Contracts Where Quality Is An Issue

In many situations, including those projects that require a higher than normal level of expertise or skill, quality of the final product may be important beyond meeting minimum specifications. In those situations, the City may use a request for proposal process, provided that the cost factor constitutes at least 75% percent of the total evaluation score. In scoring the cost factor, the proposer submitting the lowest cost amount shall receive the maximum possible score for the cost factor, and the scores of the other proposers shall be reduced by the percentage by which their cost exceeded the lowest cost. For example, if the maximum score for the cost factor is 80, the lowest cost proposer would get a score of 80. A proposer with a cost that is 10 percent higher would have the score reduced by 10 percent (8 points), to 72.

10.110 Individual Exemptions

A. The City may exempt a particular contract or contracts from formal competitive process requirements which are not otherwise exempted under these rules. The City shall prepare an application for an individual exemption containing the following information:

1. The nature of the project:

2. Estimated cost of the project;

3. A narrative description of the cost savings anticipated by the exemption from the formal competitive process and the reasons the formal competitive process would be inappropriate;

4. Proposed alternative contracting and purchasing practices to be employed; and

5. The estimated date by which it would be necessary to let the contract.
- B. The Board may require such additional information as it deems necessary to determine whether a specific contract is to be exempt from the formal competitive process.
 - C. The Board shall hold a public hearing and adopt findings justifying the individual exemption. The findings shall at a minimum include the findings required by ORS 279B.085(3) for contracts other than public improvements or ORS 279C.335 for public improvement contracts.
 - D. Notification of the public hearing shall be published in a newspaper of general circulation in the City a minimum of 14 days prior to the hearing. Notification shall be published in a trade newspaper of general circulation in the state if required by the Public Contracting Code.
 - E. The notice shall state that the public hearing is for the purpose of taking comments on the City's draft findings for an exemption from the formal competitive process requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the City, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.
 - F. At the public hearing, the City shall offer an opportunity for any interested party to appear and present comment.
 - G. If the City is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the City's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

10.115 Class Exemptions

- A. The Board may exempt certain public contracts or classes of public contracts from the formal competitive process requirements by amending these rules upon approval of the following findings:
 1. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;
 2. The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the City. In making such findings, the

Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as may be deemed appropriate; and

3. . The exemption otherwise substantially supports the public interest in a way that could not be achieved under existing rules.

- B. The Board shall adopt a class exemption only after a duly noticed public hearing. The notice of the hearing shall be posted in full public view in the City Hall and published in a newspaper of general circulation at least 14 days prior to the hearing. If the exemption involves a public improvement, the notice shall also be published in a trade publication of statewide circulation.

10.120 Justification of Public Improvement Contracts Awarded Other Than By Competitive Bidding

Upon completion of and final payment for any public improvement contract in excess of \$100,000 for which the City did not use the competitive bidding process, the City shall prepare and deliver to the Local Contract Review Board an evaluation of the public improvement project. The evaluation shall include but not be limited to:

- A. The actual project cost as compared with original project estimates.
- B. The amount of any guaranteed maximum price.
- C. The number of project change orders issued.
- D. A narrative description of successes and failures during the design, engineering and construction of the project.
- E. An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

Evaluations required by this section shall be made available for public inspection and shall be completed within 30 days of acceptance of the project.

2. Prior to awarding the contract, the City has made reasonable effort to notify known vendors of competing or comparable products of the intended specifications and invited those vendors to submit competing proposals.
 3. If the purchase does not exceed \$25,000, the notice and invitation may be informal.
 4. If the amount of the purchase exceeds \$25,000, the notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.
- B. If the amount of the purchase exceeds \$25,000, the City shall document its actions in the bid file. Such documentation shall include:
1. A brief description of the proposed contract or contracts.
 2. A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the City to notify and invite proposals from competing vendors.
- C. If the City intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed 2 years, it may so state in the documentation required by this rule, and the documentation shall be sufficient notice as to subsequent purchases.

20.025 Product Pre-qualification

- A. When it is impractical to create specific design or performance specification for a type of product to be purchased, the City may specify a list of approved products by reference to particular manufacturers or sellers according to the following product pre-qualification procedure:
1. The City has made reasonable efforts to notify known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of pre-qualified products. Notification shall include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the City may notify vendors and manufacturers appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.
 2. The City permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.

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 2. The City permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.

- B. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification revoked, the City shall notify the applicant in writing. The applicant may appeal to the Board for a review of the denial or revocation in the same manner as an appeal of disqualification or denial provided in PCR 30.150.

20.030 Brand Name or Mark Exemption

- A. The City may apply for and receive a brand name or mark exemption ruling from the Board for current and contemplated future purchases. Applications shall contain the following information:
1. A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.
 2. The brand name, mark or product to be specified.
 3. The reasons the City is seeking the exemption.
- B. The Board may grant brand name or mark exemptions only if either of the following conditions are met:
1. The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.
 2. There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.

Chapter 25 EMERGING SMALL BUSINESSES

25.010 Emerging Small Businesses

The City shall pursue a policy of providing opportunities for available contracts to emerging small business and shall cooperate with the Advocate for Minority, Women and Emerging Small Business to determine the best means by which to make such opportunities available.

25.015 Authority to Require Subcontracting with Emerging Small Businesses

The City may, in solicitation documents, require that some portion of the work to be performed or some portion of the materials to be provided by a certified emerging small business and establish other requirements authorized by ORS 279A.105.

Chapter 30 FORMAL COMPETITIVE PROCESSES

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30.010 Definitions

For purposes of this chapter, the following definitions apply:

- A. "Addenda to the Solicitation Documents" means additions or changes to the solicitation documents defined as addenda shall be labeled as such and distributed according to these rules.
- B. "Bid" means an offer submitted in response to an invitation to bid.
- C. "Bid Closing" means the date and time announced as the deadline for the receipt of bids.
- D. "Bid Opening" means the date, time and place set for opening of bids.
- E. "Bid Sample" means a representative specimen of the item that will be available in response to the bid.
- F. "Bidder" is a person, corporation, or other entity who submits a bid in response to the City's invitation to bid.
- G. "Bidding Period" means the span of time between the date of the invitation to bid and the time and date set for receipt of bids. ~~A minimum of 14 calendar days shall be provided, unless a shorter time is deemed necessary in the public interest for a particular procurement.~~
- H. "Contract" means the written agreement, including the City's solicitation documents and the accepted portions of a bid or proposal, between the City and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the City may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to the City's solicitation document and the accepted portions of a bid or proposal. If the contract is for a public improvement, the "contract" may consist of the City's solicitation document, including any addenda, the general and special conditions governing the work, the accepted portions of the bid or proposal, the performance and payment bond (if required), plans, technical specifications, approved show drawings, and any contract amendments, including approved change orders.
- I. "Contract Price" means the total of the awarded bid or proposal amount, including any approved alternates and any fully executed change orders or amendments.
- J. "Contract Release Order" means the document authorizing an additional purchase on an existing requirement contract.

- K. "Contractor" means the individual, firm, or corporation awarded the public contract to furnish the City the goods, services, or work procured in the City's solicitation.
- L. "Descriptive Literature" means materials submitted by prospective vendors to provide information concerning the products available in response to the bid.
- M. "Facsimile" or "fax" means the electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; i.e., facsimile bid, the term refers to a document (in the example given, a bid) that has been transmitted to and received by the City via facsimile.
- N. "Lowest Responsible Bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified by the public contracting agency under ORS 279.037(ORS 279.029(1)).
- O. "Proposer" is a person who submits a proposal in response to the City's Request for Proposals.
- P. "Solicitation Document" means an Invitation to Bid or Request for Proposals which included all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.
- Q. "Specifications" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. Specifications may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or through attachment to the contract.

30.0160 Competition

- A. Contracts issued by the City shall be awarded by formal competitive process except as otherwise exempted under the Oregon Public Contracting Code or these rules. Unless otherwise set forth herein, the City may elect whether to use the invitation to bid or a request for proposal process.
- B. It is the policy of the City to encourage public contracting competition that supports openness and impartiality in the maximum extent possible.
- C. The City finds that:
1. Competition exists not only in prices, but in the technical

competence of suppliers, in their ability to make timely deliveries, and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition.

2. The nature of effective competition varies with the product or service being procured and, that while competitive sealed bids are a common method of procurement, it is not always the most advantageous, practical or cost-effective method of source selection. The cost of the selection process must be considered – a costly selection process is not appropriate for contracts with a low dollar value.

3. Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

- a. Price competition as represented by the initial or acquisition price;
- b. Competition as represented by price and performance evaluations of the competing items and suppliers;
- c. Competition as represented by the evaluation of the capabilities of bidders or proposers to perform needed services;
- d. Competition as represented by evaluation of the capabilities of the bidders and proposers to perform the services followed by a negotiation on price;
- e. Competition as represented by another method of procurement that is reasonably calculated to satisfy the City's needs.

D. All public contracts shall be made under conditions that foster or reflect competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

1. Writing specifications and procurement documents in a simple and easy to read format;
 2. Searching for new sources of supply;
 3. Attempting to make solicitation documents simple and inviting;
 4. Everyday courtesy shown to prospective suppliers and contractors;
- and

5. The way information on contracting opportunities is provided to suppliers including but not limited to advertisement in publications of general circulation or in trade publications and any other reasonable methods that encourage competition.

E. The City may evaluate every aspect of competition in its efforts to purchase products or services, choose the appropriate solicitation process, or award contracts according to the criteria described herein and arrive at offers that represent optimal value to the City.

30.015 Prequalification of Prospective Bidders and Proposers

~~(A) A contracting agencyThe City may prequalify prospective bidders or proposers to submit bids or proposals for public contracts to provide particular types of goods or services. The method of submitting prequalification applications, the information required in order to be prequalified and the forms to be used for submitting prequalification information shall be determined by the contracting agencyCity unless otherwise prescribed by rule adopted by the Director of the Oregon Department Administrative Services or the local contract review board.~~

~~(B) The contracting agencyCity shall, in response to the receipt of a prequalification application submitted under subsequent (1) of this subsection A, notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified based on the standards of responsibility listed in ORS 279B.110 (2), the type and nature of contracts that the prospective bidder or proposer is qualified to compete for and the time period for which the prequalification is valid. If the contracting agencyCity does not prequalify a prospective bidder or proposer as to any contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in ORS 279B.110 (2) the prospective bidder or proposer failed to meet. Unless the reasons are specified, the prospective bidder or proposer shall be deemed to have been prequalified in accordance with the application.~~

~~(C) If a contracting agencyCity subsequently discovers that a prospective bidder or proposer that prequalified under subsections (A) and (B) of this section is no longer qualified, the agencyCity may revoke the prequalification upon reasonable notice to the prospective bidder or proposer, except that a revocation is invalid as to any contract for which an advertisement for bids or proposals has already been issued. (Greg to get additional info. from ODOT)~~

30.020 Eligibility to Bid on Construction Contracts

A person shall not submit a bid or proposal to work as a construction contractor unless that person is first registered with the Construction Contractors Board or licensed by the
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State Landscape Contractor's Board as required by ORS 671.530. Bids from persons who fail to comply with this requirement shall be deemed non-responsive and be rejected.

30.025 Solicitation Documents

Solicitation documents shall include the following:

- A. Instructions and information to bidders or proposers concerning the submission requirements, including the time and date set for opening, the name, address and title of the person designated to receive bids and a contact person, if different, a statement the bid or proposal must be physically received by the City by the deadline and any other special information relating to bid submission. The bid deadline shall be at least seven days after the first publication of notice and 5 days after the last publication of notice.
- ~~B. The date that pre-qualification applications must be filed if pre-qualification is a requirement.~~
- C. The character of the work to be done or the items to be purchased, including, as applicable: specifications, delivery or performance schedule, inspection and acceptance requirements, and special evaluation factors;
- D. The office where any additional information, including additional specifications, may be reviewed or obtained;
- ~~E. For bids – the contract terms and conditions, including warranty and bonding or other security requirements, as applicable. For proposals, a list of contract terms required by the City, a list of additional issues to be included in the contract, and a list of issues for which the proposer is expected to propose contract terms. For both bids and proposals, the contract will include consequences for a contractor's failure to perform the SOWscope of work and meet performance standards.~~
- F. That the solicitation may be cancelled or that any or all bids may be rejected for not complying with all prescribed procedures and requirements;
- G. That any and all bids may be rejected for good cause on a finding that it is in the public interest to do so;
- H. In invitations to bid, a statement whether the bidders is a resident bidder;
- I. That a contractor must be licensed for asbestos abatement under ORS 468A.710, if applicable;
- J. That no bid or proposal for construction shall be received or considered by the City unless the bidder or proposer is registered with the Construction Contractors

Board, as required by ORS Chapter 701 or licensed by the State Landscape Contractors Board, as required by ORS 671.530;

K. If bid or proposal security is required, a description of the security required;

L. A description of any performance and payment bonding requirements;

M. For proposals, a description of the manner in which proposals will be evaluated and the relevant value of each evaluation factor, including price. If a multi-tiered process is used, that process will be described, including the process for protesting the decision at any stage of the process;

N. If applicable, a statement that no bid will be considered unless the bid contains a statement that the bidder will comply with ORS 279C.840 or 40 USC 276a (prevailing wage and Davis-Bacon Act), with the information required by state law relating to prevailing wage; and

O. All addenda issued by the City.

P. Contract specifications must include:

1. A provision stating the applicable prevailing wage rates, if applicable, including any applicable amendments. Generally, the applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitations, although different provisions apply to Construction Manager/General Contractor (CM/GC) contracts. (See "Use of a Construction Manager/General Contractor" in this *Public Agency Responsibilities* section for this information.) If the project is subject to both the state PWR law and the Davis-Bacon Act, the higher of the state and federal rates must be included, along with any applicable amendments. A statement incorporating the appropriate rates by reference will satisfy this requirement, but the reference must be specific as to the title and date of the publication that applies, and the date(s) of all amendments that apply.

— ORS 279C.830.1; OAR 839-025-0020(4) and (5).

2. If the public works project contract exceeds \$100,000, a provision that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(3).

3. Requires contracting agencies to state, in their solicitation documents for goods and services, the consequences of a contractor's failure to perform, including the remedies the agency City may pursue for contract violations.

4. A performance specification for contracts for goods and services. See the

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commentary to OAR 137-047-0255 and 137-047-0260.

R(1). Unless the City, can Directs that unless the contracting agency for good cause specifies otherwise, the statement of work in a request for proposal must require, (unless the procurement is for architectural, engineering, and land surveying services or related services), that the contractor to meet the "highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services." OAR 137-047-0260(2)(b)(D) states this command. In turn, OAR 137-047-0260(5) refines the concept of "good cause" under ORS 279.060(2)(c). See the commentary to OAR 137-047-0255 concerning "good cause."

P Recycled materials preference language as required in Section 90.015.

Modifies the standards of contractor responsibility in ORS 279B.110 and ORS 279C.375, as mentioned in the commentary to OAR 137-047-0640 and 137-048-0390.

Imposes "conflict of interest" type restrictions on contracting with construction and design professionals to oversee public improvement work, as discussed in the commentary to OAR 137-048-0130.

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30.030 Bids and Proposals Are Offers

- A. Bids and proposals constitute an offer to enter into a contract which, if accepted by the City, shall bind the bidder or proposer to a contract unless the bid or proposal is withdrawn prior to opening.
- B. The bid or proposal shall constitute a "firm offer" unless bidders or proposers are specifically authorized to take exceptions or to leave terms open to negotiation by the invitation to bid or request for proposals. However, nothing in this provision prohibits the City from negotiating with a bidder or proposer to the full extent allowed by state law. Unless expressly authorized by the solicitation documents or these rules, bidders or proposers shall not make their bids or proposals contingent upon the City's acceptance of specifications or contractual terms that conflict with or are in addition to those advertised in the solicitation documents.

30.035 Public Notice

- A. Distribution

Solicitation documents or notices of the availability of solicitation documents shall be mailed to likely bidders and proposers, placed on the Oregon Department of Administrative Service's electronic procurement system known as the "Vendor Information Program," or otherwise furnished to a sufficient number of bidders or proposers for the purpose of securing competitive bids or proposals. Notice of availability shall indicate where, when, and for how long the bid/proposal documents may be obtained. The City may charge a fee for the solicitation documents.

B. Advertising

1. Every formal solicitation of bids or proposals shall be advertised. An advertisement for bids or proposals shall be published at least once in at least one newspaper of general circulation in the City and in as many additional issues and publications as the City may determine to be necessary or desirable to ensure competition. If for a construction contract in excess of \$100,000, notice shall be published in at least one trade newspaper of general statewide circulation. The City shall endeavor to provide information concerning bids and proposals on its website and may post information on other databases.
2. All advertisements for bids or proposals shall state:
 - a. The date and time after which bids will not be received, which date shall not be less than five (5) days after the date of the last publication of the advertisement;
 - b. The date that pre-qualification applications must be filed if pre-qualification is a requirement;
 - c. The work to be done or the items to be purchased;
 - d. The office where additional documentation, including specifications, specifications may be reviewed or obtained; A minimum of 14 calendar days shall be provided, unless a shorter time is deemed necessary in the public interest for a particular procurement.
 - e. The name, title, and address of the person designated to receive bids;
 - f. The date, time, and place that bids or proposals will be opened;
 - g. If for a public improvement, whether the prevailing wage provisions of ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 USC 276a) apply.

C. Posting of bid or proposal advertisement.

A copy of each bid or proposal advertisement shall be posted at the business office of the City. Bidders or proposers may obtain a copy upon request.

30.040 Bid or Proposal Preparation

Bid and Proposal Preparation Instructions:

- A. Except as otherwise allowed, as applicable, bids and proposals shall be typed or prepared in ink and shall be signed in ink by the submitter or an authorized representative. The City will not accept facsimile bids or signatures.
- B. Bids and proposals shall be made on the bid forms provided unless otherwise instructed in the solicitation document.
- C. Alterations or erasures, if any, shall be initialed in ink by the person signing the bid.
- D. Bids and proposals shall include all required documents and descriptive literature.

30.045 Bidder Pre-qualification

The City may require mandatory pre-qualification of bidders on forms prescribed in the solicitation document. When pre-qualification is required by the solicitation documents as a condition for bidding, the City shall not consider the bid(s) of any prospective bidder who is not pre-qualified. The City shall determine qualifications within 30 days of receipt of an application for prequalification. In determining responsibility of the applicant, the City shall consider only the criteria listed in ORS 279B.110(2). City may have a separate pre-qualification process.

If a bidder is currently pre-qualified by either the State Department of Transportation or the State Department of Administrative Services to perform contracts, the bidder shall be presumed qualified to perform similar work for the City.

30.050 Bidder Submissions

- A. Samples and Descriptive Literature.

Samples or descriptive literature may be required when it is necessary to evaluate required characteristics of an item. Samples may be returned in accordance with provisions contained in the solicitation documents.

- B. Identification of Bids and Proposals.

Bids and proposals shall be submitted in a sealed envelope appropriately marked to ensure proper identification and special handling. The City shall not be responsible for the proper identification and handling of any bid not submitted in the designated manner

or format to the required delivery point. The City may refuse to accept or may reject any bid or proposal not properly sealed or marked.

C. Receipt of Bid or Proposal.

It is the submitter's responsibility to ensure that bids or proposals are received by the City at the required delivery point prior to the stated bid or proposal closing time regardless of the method used to submit or transmit them.

30.055 Bid Security

A. Public Improvement Contracts.

Bid security not to exceed ~~ten~~10 percent (10%) of the base bid(s) shall be required for public improvement contracts where the amount of the contract exceeds \$100,000. The bid security shall be forfeited if the bidder fails to execute the contract promptly and properly if awarded.

B. Other Public Contracts.

Bid security not to exceed ~~ten~~10 percent (10%) of the bid may be required by the City for other contracts in order to guarantee acceptance of the award. This requirement shall be stated in the solicitation documents.

C. Contracts Under \$100,000.

Bid security for contracts of less than \$100,000 shall be required only in critical circumstances so as not to discourage competition.

D. Form of Bid Security.

The following forms of bid security will be accepted by the City:

1. Surety bond from surety company authorized to do business in the State of Oregon;
2. Cashier's check, certified check, or savings and loan secured check;
or
3. Annual surety bond filed with the City (except for public improvement contracts).

E. Return of Bid Security

The bid security of all unsuccessful bidders shall be returned after a contract has been executed or all bids have been rejected. The City may return the bid security of

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unsuccessful bidders after bid opening but prior to award if the return does not prejudice bid award and provided that the security of at least the three lowest bidders is retained pending the execution of a contract.

F. Security for Proposals

If contracts are to be awarded based on competitive proposals, the City may, in its discretion, require proposal security on the same terms as the bid security described in this section. Proposal security shall normally be required for any public improvement contract to be awarded by a proposal process.

30.060 Pre-Bid or Pre-Proposal Conferences

Pre-bid or pre-proposal conferences may be held by the City to explain the City's requirements, conduct site inspections, or otherwise supplement or clarify information. The City may require attendance at the conference as a condition for bidding or submitting a proposal. The conferences shall be announced in the solicitation documents. The conference shall be held within a reasonable time after the solicitation documents have been issued but sufficiently before bid closing to allow consideration of the conference results in preparing submittals. Statements at the conference shall not change the solicitation documents unless confirmed to all prospective bidders or proposers by means of a written addendum to the solicitation documents.

30.065 Addenda to Solicitation Documents

A. Form.

Changes to solicitation documents shall be accomplished by addenda. The bidder or proposer shall acknowledge receipt of all addenda issued, either with the bid or proposal or separately prior to opening. A solicitation may be delayed or suspended by addendum if in the best interest of the City.

B. Distribution.

Addenda shall be sent to all prospective bidders or proposers known to have obtained the solicitation documents or attended any mandatory conferences provided that contact information for the prospective bidder has been provided to the City.

C. Timeliness.

1. Addenda shall be issued within a reasonable time prior to bid closing to allow consideration prior to submittal of the bid or proposal, but in no case less than 72 hours before the submittal deadline. ~~if necessary, the~~ City may notify prospective bidders or proposers by telegram, telephonic facsimile (fax), e-mail, or telephone. If telephone is used, the City shall confirm the oral notice with a written addendum. It is each prospective

bidder or proposer's responsibility to acknowledge each addendum prior to the closing date.

2. In its discretion, the City may extend the closing date and time to allow prospective bidders or proposers to analyze and adjust to changes made by Addenda. The City shall notify prospective bidders or proposers of new closing date and time either in the Addendum or in writing accompanying the Addendum.

D. ~~Addenda to Multi-Tier RFPs~~

~~If a multi-tier process is used to evaluate proposals, the City may issue addenda applicable to any tier of the process at least 5 days before starting that tier of the process. If the City does issue such addenda, amended or supplemental proposals may be submitted before the next tier of the process is started.~~

30.070 Pre-Opening Modification or Withdrawal of Bids or Proposals

A. Modifications.

Bids or proposals once submitted may be modified in writing prior to the time and date set for bid closing. Any modifications shall be prepared on the company letterhead, signed by an authorized officer, and state that the new document supersedes or modifies the prior bid or proposal. To ensure the integrity of the process, the envelope containing any modifications to a bid or proposal shall be marked as follows:

Bid (or Proposal) Modification
Bid Number or Other Identification

B. Withdrawals.

1. Bids or proposals may be withdrawn by written notification on company letterhead signed by an authorized person and received prior to the time and date set for closing. Bids or proposals also may be withdrawn in person prior to the scheduled closing upon presentation of appropriate identification.

2. Unopened bids or proposals withdrawn under subsection (a) above may be released to the bidder after voiding any date and time stamp used.

3. Requests to withdraw mailed bids or proposals shall be marked as follows:

Bid (or Proposal) Withdrawal
Bid (or Proposal) Number or Other Identification

C. Documentation.

All documents relating to the modification or withdrawal of bids or proposals shall be made a part of the appropriate bid file.

30.075 Receipt, Opening, and Recording of Bids and Proposals

A. Receipt.

Upon receipt, each bid, proposal, and modification shall be time-stamped or marked by hand but not opened and shall be stored in a secure place until opening. If bids, proposals, or modifications are opened inadvertently or are opened prior to the time and date set for opening because they were improperly identified, the bids, proposals, or authorized modification documents shall be resealed and stored for opening at the correct time. When this occurs, documentation of the procedure shall be placed in the file.

B. Opening and Recording.

1. **Bids** and modifications shall be opened publicly, at the time, date, and place designated in the solicitation documents. If witnesses are present at the bid opening, and to the extent practicable, the name of each bidder, the bid price(s), and such other information as considered appropriate, shall be read aloud. On voluminous bids the City may advise bidders as part of the solicitation documents that the bid items and prices will not be read aloud.

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2. **Proposals** may be opened at any time after the deadline for submittal of proposals. A summary sheet providing basic information about each proposal shall be prepared.

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C. Availability.

Opened bids shall be available for public inspection prior to award except to the extent the bidder designates trade secrets or other proprietary data to be confidential (ORS 192.501(2)). Proposals shall not be available for public inspection until after a contract is awarded and entered into. The City shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the bid and shall be readily separable from the bid or proposal in order to facilitate public inspection of the non-confidential portion of the bid or proposal. Prices, makes, model, or catalog number of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

D. Notice of Intent to Award

The City shall provide notice of intent to award to each person that has submitted a bid

~~or proposal. The notice shall state the date, time and location of the bid award decision. The notice shall include the name of the person or entity that staff recommends the contract be awarded to. The notice shall include any bid comparisons sheets or proposal comparison sheets.~~

30.080 Late Bids, Proposals, Withdrawals, and Modifications

Any bid, proposal, withdrawal, or modification received after the deadline for submission set in the solicitation documents is late and shall not be considered. The City may use any watch or clock to determine the time and the determination of the City employee or officer receiving the bids as to whether a bid, proposal, withdrawal, or modification is late shall be final and not subject to challenge.

30.085 Mistakes

A. General.

Under extraordinary circumstances, a bid or proposal may be withdrawn after the deadline for submittal because of an inadvertent nonjudgmental mistake. If the mistake is attributable to an error in judgment, the bid or proposal may not be withdrawn or corrected. Correction or withdrawal by reason of nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the City or the fair treatment of other bidders or proposers.

B. Mistakes Discovered after Bid Closing but before Award.

This section applies to situations where mistakes in bids are discovered after the submission deadline but before award.

1. Minor Informalities.

Minor informalities are matters of form rather than substance that are evident from the solicitation documents, or insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders or the City; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit prices. Examples include, but are not limited to, the failure of a bidder to:

- a. Return the number of signed bids or number of other documents required by the solicitation documents
- b. Sign the bid form in the designated block so long as the solicitation documents evidence an intent to be bound; or
- c. Acknowledge receipt of an addendum to the solicitation documents, but only if:

- i. It is clear from the bid that the bidder received the addendum and intended to be bound by its terms; or
- ii. The addendum involved did not affect price, quantity, quality, or delivery.

C. Mistakes Where Intended Correct Bid is Evident.

If the mistake and the intended correct bid are clearly on the face of the bid form, or can be substantiated from accompanying documents, the City may accept the bid. Examples of mistakes that may be clearly evident on the face of the bid form are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. Mistakes that are clearly evident on the face of the bid form or proposal document also may include instances in which the intended correct bid or proposal item is made clearly evident by simple arithmetic calculations. For example, a missing unit price may be established by dividing the total bid or proposal item by the quantity of units for that item, and a missing or incorrect total bid or proposal price for an item may be established by multiplying the unit price by the quantity when those figures are available on the bid or proposal. For discrepancies between unit prices and extended prices, unit prices shall normally prevail.

D. Mistakes Where Intended Correct Bid is Not Evident.

The City may not accept a bid in which a mistake is clearly evident on the face of the bid form but the intended correct bid is not clearly evident or cannot be substantiated from accompanying documents.

30.090 Time for Acceptance

Bids shall be valid and binding offers for 30 days from the deadline to submit bids unless otherwise specified in the solicitation documents. Proposals shall be binding and valid offers for 60 days from the date of the submittal deadline.

30.095 Extension of Time for Acceptance of Bid or Proposals

The City may request orally or in writing that bidders or proposers extend the time in which the City may accept their offers.

30.100 Evaluation and Award

A. General.

The contract, if awarded, is to be awarded to the lowest responsive and responsible bidder or the best responsive and responsible proposer whose bid substantially complies with the requirements and criteria set forth in the invitation to bid, or request for proposal,

and these Local Contracting Rules. Consistent with the provisions of the solicitation documents and in the public interest as determined by the City, awards may be made by item, groups of items, or entire bid or proposal. The City reserves the right to reject any bid or proposal not in compliance with the solicitation documents or with state law, City Code, or these rules. The City reserves the right to reject any or all bids or proposals upon a finding by the City that it is in the public interest to do so.

B. Special Requirements.

1. Solicitation documents shall set forth any special requirements and criteria that will be used to determine the lowest responsible bidder. No bid shall be evaluated for any requirement or criterion that is not disclosed in the solicitation documents or City regulation.
2. In determining the lowest responsible bidder, the City shall, for the purpose of awarding the contract, add a percent increase on the bid of a non-resident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.
3. The City may rely on a list provided for by the Oregon Department of Administrative Services pursuant to ORS 279.029(3) for preference provided for by this section.

C. Product Acceptability.

1. The solicitation documents shall set forth the evaluation criteria to be used in determining product acceptability. The City may require the submission of samples, descriptive literature, technical data, or other material, and may also provide for accomplishing any of the following prior to award.
 - a. Demonstration, inspection, or testing of a product prior to award for such characteristics as quality or workmanship;
 - b. Examination of such elements as appearance, finish, taste, or feel; or
 - c. Other examinations to determine whether the product conforms to specifications.
2. The acceptability evaluation is conducted only to determine that a bidder's offering is acceptable as provided in the solicitation documents. Any bidder's product, which does not meet the minimum requirements shall be rejected.

D. Determination of Lowest Responsive and Responsible Bidder.

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Following determination of product acceptability as set forth in subsection C, if applicable, bids will be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the solicitation documents. Only objectively measurable criteria, which are set forth in the solicitation documents, shall be applied in determining the lowest responsible bidder. Examples of such criteria include, but are not limited to, transportation cost, volume weighing, trade-in allowances, depreciation allowances, cartage penalties, and ownership or life cycle cost formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors:

1. Are reasonable estimates based upon information the City has available concerning future use;
2. Treat all bids equitably; and
3. Recognize that public policy requires acquisitions and public improvements to be accomplished at the least cost.

The City shall take into account any preferences provided by these rules in determining the lowest bid.

F. Determination of Best, Responsive, and Responsible Proposer.

Proposals will be evaluated to determine which proposer offers the best solution to the City in accordance with the evaluation criteria set forth in the solicitation documents. Only the criteria set forth in the solicitation documents shall be applied. The criteria shall be as objective as possible. Examples of evaluation criteria may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, performance history on other private and public contracts, experience of key personnel, adequacy of equipment and/or physical plan, financial wherewithal, sources of supply, references and warranty provisions. The City may consider extrinsic evidence, such as references. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such evaluation factors shall:

1. Be reasonable estimates based on information available to the City;
2. Treat all proposals equitably;
3. To the extent that the proposal involves a public improvement, recognize that public policy requires public improvements to be accomplished at the least cost.

G. In evaluating proposals, the City may use any of the following methods:

1. An award based solely on an evaluation of the written proposals;
2. Discussions with a number of proposers leading to a best and final offer from each proposer and an evaluation of the best and final offers;
3. An award based on the written proposals and interview performance;
4. Serial negotiations, starting with the highest ranked proposer;
5. Competitive simultaneous negotiations;
6. A multi-tiered process, with some number of proposer being eliminated at each stage of the process;
7. A multi-stage process, with a qualifications determination at the first stage of the process, followed by cost considerations
8. Any other method or combination of methods designed to best serve the needs of the City and its taxpayers.

The solicitation document shall describe the process to be followed.

H. Notice of Intent To Award

~~Notice of intent to award may be provided by staff to all persons who have submitted bids or proposals at least 10 days before the LCRB hearing. If no notice of intent to award is distributed 10 days before the hearing, the notice of intent to award shall be issued within two business days after the LCRB hearing.~~

1. City staff shall submit to the LCRB a recommendation for a Notice of Intent to Award. After approval by the LCRB, City staff shall provide the notice of intent to award to each person that has submitted a bid or proposal. The notice shall state the date, time and location of the bid award decision. The notice shall include the name of the person or entity that staff recommends the contract be awarded to. The notice shall include any bid comparison sheets or proposal comparison sheets.

2. If the LCRB decides to award the contract to a bidder or proposer other than the one named in the notice of intent to award, a new notice of intent to award shall be issued.

3. A person provided with a Notice of Intent to Award by the City may protest such notice as set forth in Section 30.135. The written notice of intent to award the contract shall constitute a final decision by the City to award the contract if no written protest of the notice of intent to award is filed with the City within seven (7)

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calendar days after the notice of intent to award is issued. The notice of intent to award and any written decision on a protest shall be sent to every bidder or proposer who provided an address to the City.

I. No Assignment or Transfer of Contract Rights

Unless an express provision of the public contract otherwise provides, the contractor shall not assign, sell or transfer rights, nor delegate responsibilities, under public contract, either in whole or in part, without first obtaining the City's prior written consent. Unless otherwise agreed by the City in writing, such consent shall not relieve the contractor of any obligations under a public contract, and any assignee or transferee shall be considered the agent of the contract and bound to abide by all provisions of the public contract. Except in the event of a novation, if the City consents in writing to an assignment, sale, or transfer of the contractor's rights and responsibilities, the contractor and its surety, if any, shall remain ultimately liable to the City for complete performance of the public contract as if no such assignment, sale, or transfer had occurred.

30.105 Life Cycle Cost Analysis

- A. In determining the lowest responsible bidder, in the award of a contract, the City may use life cycle costing. As used in this rule, life cycle costing means determining the cost of a product for its useful life.
- B. The City shall follow these procedures:
 - 1. At the time of writing specifications for the product, the City shall identify those factors which will have cost implications over the life of the product and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product. Energy efficiency is a factor that shall normally be considered in life cycle cost analysis.
 - 2. The solicitation documents shall set out clearly the factors and methodology to be used in life cycle cost adjustments.
 - 3. The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered. The bid or proposal that results in the lowest overall ownership cost, taking into account the life cycle costing adjustments, shall be considered the lowest bid or best proposal for purposes of bid or proposal price evaluation.

30.110 Responsibility

- A. A responsible bidder or proposer is one who has:
 - 1. Adequate financial resources to perform the contract, or the ability to

obtain such resources. The City shall require acceptable evidence of the bidder's or proposer's ability to provide or obtain the required financial resources. Acceptable evidence normally consists of, but is not limited to, current and recent balance sheets; income statements; cash flow statements; and/or a performance bond from an acceptable surety in an amount equal to the bid or proposal price. Such evidence may also include a commitment of specific arrangement that will be in existence at the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;

2. The ability to comply with the required or proposed delivery or performing schedule, taking into consideration all existing commercial and public business commitments;

3. A satisfactory performance record. A bidder or proposer who is, or recently has been, seriously deficient in contract performance shall be presumed to be non-responsible, unless the City determines that the circumstances were properly beyond the contractor's control or that the contractor has taken appropriate corrective action. Record of failure to perform acceptably is strong evidence of non-responsibility. The City shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation. In addition, the City may consider whether the bidder's performance history demonstrates responsibility as defined in ORS 200.005(11) and 200.045(3);

4. Key personnel available of sufficient experience, as determined by the City, to perform the contracts;

5. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);

6. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

7. A satisfactory record of integrity;

8. For contractors on public improvement contracts, has not been determined to be not responsible by the Construction Contractors Board; and

9. Is otherwise qualified and eligible to receive award under applicable

laws and regulations.

- B. The City shall consult with the Construction Contractors Board concerning the responsibility of any person to whom a public improvement contract is proposed to be awarded, and shall comply with the reporting requirements of ORS 279.375. The City has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder or proposer is responsible. This investigation may include, but is not limited to:
 - 1. An inquiry into the responsibility of proposed subcontractors and suppliers
 - 2. Requiring a bidder or proposer to demonstrate its financial ability to perform the contract as provided in subsection A.1 of this rule. In exercising this right, the City shall notify the apparent successful bidder or proposer in writing to submit such documentation as the City deems necessary to complete a thorough evaluation of financial ability.
 - 3. By submitting a bid or proposal, a bidder or proposer authorizes the City to request any credit report information the City deems necessary to investigate and evaluate financial responsibility to perform the contract(s).
- C. Failure of a bidder or proposer to promptly supply information requested by the City during its responsibility investigation shall be grounds for a finding of non-responsibility.
- D. Only bids and proposals from responsible bidders or proposers, as defined in this rule, shall be eligible for contract award. Bid or proposals from non-responsible bidders or proposers shall be rejected as provided in PCR 30.115.

30.115 Responsive and Non-responsive Bids or Proposals; Acceptance and Rejection

- A. A "responsive bid or proposal" is one that complies in all material aspects with the solicitation documents and with all prescribed public bidding procedures and requirements.
- B. A "non-responsive bid or proposal" is one which:
 - 1. Omits, or is unclear as to the price and the price cannot be determined in the bid or proposal documents;
 - 2. Offers goods or services of a quality or quantity inferior to that requested in the solicitation documents;
 - 3. Does not meet the delivery date requirements specified in the

solicitation documents;

4. Takes exception to the terms and conditions of the solicitation documents other than as allowed by these rules or the solicitation documents;

5. Is conditional upon the City's acceptance of terms and conditions different from those contained in solicitation documents, except as allowed by these rules or the solicitation documents; or

6. Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the solicitation documents.

C. The City shall accept, and consider for award, only those bids or proposals, which are responsive as defined in this rule. Non-responsive bids or proposals shall be rejected, as provided in PCR 30.115.

30.120 Low Tie Bids

A. Definition.

Low tie bids are low responsive bids from responsible bidders that are identical in price, fitness, availability and quality and which meet all the requirements and criteria set forth in the solicitation documents.

B. Award.

1. If low tie bids are received, a preference shall be given to goods and services that have been manufactured or produced in Oregon.

2. If the bids remain tied after application of the Subsection 1, preference shall be given to the bidder whose principal offices or headquarters are located in Oregon.

3. If the bids remain tied after application of Subsections 1 and 2, the award shall be made by drawing lots among any tied Oregon bidders. Such bidders shall be given notice and an opportunity to be present when the lots are drawn.

4. If there are no Oregon bidders after application of subsections 1 and 2, award of the contract shall be made by drawing lots.

30.125 Rejection of Individual Bids or Proposals

A. General.

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This section applies to rejections, in whole or in part, of individual bids or proposals. The City may reject in whole or in part, any bid not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding of the City that it is in the public interest to do so. No bid shall be considered unless the bid security, properly executed, has been submitted with the bid as required by the solicitation documents.

B. Reasons for Rejection.

Reasons for rejecting a bid or proposal include but are not limited to:

1. The submitter has not pre-qualified when pre-qualification is required or has been disqualified;
2. The submitter has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361;
3. The bid or proposal is non-responsive, that it does not conform in all material respects to solicitation documents or requirements, including all prescribed public procurement procedures and requirements;
4. The supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents;
5. The submitter is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity; inability to obtain bonding, loss of license, or other objective cause;
6. The submitter within the last 5 years has been found, in a civil, criminal, or administrative proceeding, to have committed fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;
7. The submitter has been determined responsible (i.e., adjudicated by a court, or as determined in writing by the City agency in the case of a public contract) for more than one breach of a public or private contract or contracts in the last 3 calendar years before the scheduled date of the bid opening;
8. The security has not been submitted or properly executed as required by the solicitation documents;
9. When applicable, the bidder has not met the emerging small business,

disadvantaged business, minority business, and women business enterprise requirements, if any, established by the City, and has not made a good faith effort to comply with the requirements prior to the time bids are opened;

10. The submitter failed to certify in accordance with Section D of this rule; or

11. Other circumstances of the particular bid, proposal, or submitter (including submitter's subcontractors) indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by the City.

12. The contractor has discriminated against subcontractors because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

C. Form of Business Entity.

The corporate or business form of bidders or proposers shall be subject to scrutiny, so that previously disqualified bidders or proposers, or their officers and directors, may not by subterfuge, change of apparent ownership, or other adjustments in formal appearance, avoid application of this rule.

D. Non-discrimination Certification

The bidder or proposer shall certify as part of the bid that the contractor has not discriminated against subcontractors because the subcontractor is certified as a minority, women, or emerging small business enterprise.

30.130 Rejection of All Bids or Proposals

A. Bid Rejection.

All bids or proposals may be rejected for good cause upon a written finding by the City that it is in the public interest to do so. Notification of rejection of all bids or proposals, along with the good cause justification and finding of public interest shall be sent to all that submitted a bid or proposal.

B. Rejection Criteria.

Reasons for rejecting all bids or proposals include but are not limited to: